they are considered part of the disclosure of the invention. The term, "butterfly pattern," refers to the V-shaped outline of the tapes 94 shown in Fig. 11. The term, "tape means," refers to the reinforcing tapes 95 and 96, also shown in Fig.11. Of course, the term, " means," in claim terminology, refers to all the structure necessary to accomplish a stated function and does not need to be specifically used in the specification.

The specification has been amended to insert the term, "butterfly pattern," in the description of Fig.11. As mentioned above, support for this term is found in the original claims and in the original drawings.

Claims 1, 12 and 13 stand rejected as indefinite in the use of the term, "a minimum deflection distance," because there is no standard given in the specification for ascertaining that distance. The specification has a table, on page 24, that gives the relationship of maximum deflection over span. Certainly, this table may be interpolated for spans larger and smaller than the length of spans given in the table. Further, the specification teaches a formula for arriving at the maximum deflection of the material over span. And, on page 22, lines 10 - 12, there is the statement,

> " This maximum deflection is the minimum distance the barrier should be spaced from the frangible object being protected."

One having ordinary skill in the art would have no difficulty in determining the minimum distance for any span length by using the table or the formula or both. These claims are drafted not to specify a particular span or a particular deflection distance but set forth the relationship between the structure of the fabric and the manner of deployment with regard to the building being protected.

With regard to claim 13, the terminology,

" * * flexible mesh material having a maximum deflection

of approximately 20% before failure and air permeability

of approximately 250 cfm at a wind force of 1 inch Hg., * * "

relates to the strength of the fabric and the interstice size. The specification discloses a particular fabric having these parameters. Therefore, there is no extraordinary experimentation necessary to determine the metes and bounds of the claims. One of ordinary skill in the art would only have to compare the bursting deflection and air permeability of any fabric to see if it fell within the claimed boundary.

As to what the 20% maximum deflection means, the percentage would be constant over any panel size. This is preferred to reciting a particular measurement of distance an thus be limited to a particular size panel. Again, as stated above the deflections are clearly disclosed in the specification.

As to the 1 inch Hg. pressure, it is equated to a 100mph wind, in the specification, which would be measured as an over-pressure. The flow rate is normally stated per square inch, in the art.

Rejections under non-statutory double patenting policy

Claim 1 stands rejected under the judicially created doctrine of double patenting as extending the monopoly of claim 10 of U. S. Patent No. 6,325,085. Claim 10 of the patent recites a kit for use in the interior of a building having a material with opposite edges which are connected to the building. The instant application is directed to a material for external use and one edge is connected to the building and the opposing edge is connected to the ground. This is a fundamental difference between the patent

claim and the application. There is no teaching in this application to use this invention in the interior of a building. Therefore, it is not evident how any claim that may be allowed in this application would extend the life of claim 10 of the patent.

Rejections under 35 USC 103

Claims 1 - 8 and 13 - 16 stand rejected as obvious in view of Gitlin et al and applicant's disclosure. It is well established legal precedent that an applicant's disclosure cannot be used against him, see In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438. This is an improper basis for rejecting claims under 35 USC 103, see MPEP 901.03, 706.02(j) and 2143 that states that pending applications are not available as references.

If the Examiner is relying on the building code regulations of Dade County Florida, then those regulations must be cited as the reference. As to the building codes, themselves, they are arbitrary government regulations that set a minimum standard that must be complied with by the builder. There is no requirement, in the code, as to the materials that must be used by the builder.

The applicant's disclosure is the only source of information that coordinates the requirements of the Dade County building code with the fabric of his invention. The applicant's disclosure cannot be used against him because the test for obviousness is at the time of the invention and not after the Examiner has read the disclosure.

In regard to Gitlin et al, the reference does not teach any interstice size, any burst strength deflection nor impact resistance. The only thing the reference says is that it has a shade level of 60 to 75% and this is related to visibility or passage of light. One

having ordinary skill in the art would not be taught, by this reference, how to make or use the claimed invention.

Claims 9 - 12 stand rejected as obvious in view of Gitlin et al, Nolte and applicant's disclosure. This rejection is fatally defective for the same reasons stated above, in that the applicant's disclosure cannot be used against him and the only thing that ties the Dade County code to the claimed material is the applicant's disclosure.

Reconsideration of these claims is respectfully requested.

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